IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

RCRev..No. 262 of 2007(D)

RCA.95/2005 of I ADDL.DISTRICT COURT, ERNAKULAM
RCP.103/2004 of III ADDL.M.C.EKM (RENT CONTROL)
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REVISION PETITIONER/APPELLANT/PETITIONER:

SRI. ISSAC PETER, KUREETHADAM HOUSE,
N.H.BYE PASS, PALARIVATTOM,COCHIN-25.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS/RESPONDENTS/RESPONDENTS:
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1. SRI.C.V. ANTONY ANDREWS,
CHEETHAPARAMBIL,.
M/S. VARGHESE SONS FURNITURE,
MALAYA RESTAURANT BUILDING, BANERJI ROAD,
COCHIN-18.

2. SRI.C.V. EMMANUEL, CHEETHAPARAMBIL,
M/S.VARGHESE SONS FURNITURE, MALAYA RESTAURANT
BUILDING, BANERJI ROAD, COCHIN-18.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

RCR NO.262 OF 2007-D

Judgment

Balakrishnan Nair, J.

The landlord unsuccessful before the Rent Controller and the appellate authority to get eviction under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 has approached this Court. The brief facts of the case are the following :

2. The petition schedule building is part of a building complex. The petitioner purchased the said building in 1997 from one Mr.S.P.Lalan. The respondents' father late Varghese was a tenant of the building. After his death, the respondents herein are continuing as tenants. The plinth area of the petition schedule building will come to about 500 sq.ft. The monthly rent is Rs.500/-. According to the petitioner, the rate of rent in the locality ranges from Rs.30 to 50 per sq.ft. He is entitled to get at least Rs.10,000/- per month as rent for the said building. He demanded revised rent at the above rate from 01.05.2003. But the respondents did not agree to the proposal. So, in order to put the premises to better use, he has decided to start a business in curious

and gift articles etc. Hence the application under Section 11(3) of the Act.

3. The respondents disputed the claim of the petitioner that the rate of rent in the locality ranges from Rs.30 to 50 per sq.ft. The plinth area of the building, according to the respondents is only 430 sq.ft. The petitioner wanted revision of rent. Since the respondents did not oblige, this RCP was failed. The bona fide need urged is only a convenient ruse to get eviction. So, they prayed for dismissal of the petition.

4. From the side of the petitioner, PW1 and PW2 were examined and Exts.A1 to A8 were marked. From the side of the respondents, RW1 was examined and the report and sketch prepared by the Advocate Commissioner were marked as Exts.C1 and C1(a). The Rent Controller dismissed the application. The same was affirmed in appeal. The appellate authority found that when the petitioner purchased the building complex, two rooms in the ground floor and one room in the first floor were lying vacant. He sold three rooms in the ground floor out of the total six rooms after 1997. The last of the sale deeds was executed in 2003. He has also filed another application before the Rent Control Court for getting vacant possession of the adjacent room for starting some business. The appellate authority noticed that during the cross

examination, the petitioner landlord has admitted that the RCP was filed because the tenants did not accede to his request to pay rent @ Rs.10,000/-. The appellate authority also noticed that in the cross examination, the landlord admitted that if the tenant is ready to pay a reasonable rent, he is willing to withdraw the petition. Based on the above statement, the appellate authority found that the petitioner was not in bona fide need of the room. In fact, he wanted a higher rate of rent for the tenanted premises. Based on that finding, the appeal was dismissed. The learned counsel who appeared for the petitioner contended that the petitioner has made huge investment for purchasing the building. For the petition schedule building, he is getting rent only @ Re.1 per sq.ft. whereas as evident from Exts.A2 to A4, rent in the locality is around Rs.50 per sq. ft. So the necessity to put the premises to better use so that it generates higher income, is definitely a bona fide need of the landlord, it is submitted. His admission that his proposal to start business can be dropped if the rent is increased and thereby he gets a reasonable income from the room, is the candid admission of an honest landlord. The same should not have been taken as a ground to reject the petition, it is contended.

5. If the petitioner is in bona fide need of the premises, he would not withdraw his petition even if enhancement of rent is offered. The appellate authority felt that the stand taken by the landlord that if reasonable rent is offered, he is ready to withdraw the petition would expose the lack of bona fide need claimed by the petitioner under Section 11(3) of the Act. We find that the said view of the appellate authority is a plausible view on facts. It is the concurrent view also. Even if a different view is possible, the mere difference of opinion is not a ground sufficient to condemn a decision as unreasonable. Therefore, we are of the view that no ground has been made out warranting interference with the decision of the appellate authority under Section 20 of the Act. In the result, the RCR fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

16.08.2007 **HARUN-UL-RASHID, JUDGE**

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